
(1999) 07 PAT CK 0085
In the Patna High Court
Case No : C.W.J.C. No. 1323 of 1988

Belal Hussain and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Citation : (1999) 3 PLJR 652

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : Mahasweta Chatterjee in 1323 and Mr. Rajeeva Sharma in 3467, for the Appellant; J.S. Singh and Madhav Prasad Yadav, for the Respondent

Final Decision : Allowed

Judgement

R.N. Sahay, J.—In both these writ applications common question of law arises for consideration and hence they are being disposed of by this common order. The first question which arises for consideration is whether the Consolidation courts have power to declare a deed of adoption to be invalid since such a document is not a void but voidable document and can only be declared to be void by a civil court. Second question for consideration is whether the petition filed by respondent no.5 after eight years and the order passed by the Consolidation Officer in favour of the petitioners was barred u/s 10A of the Consolidation of Holdings and Prevention of Fragmentation Act.

2. The relevant facts may be stated as follows. Records of right of village Jagdishpur P.S. Barari District Katihar was prepared u/s 9 of the Consolidation Act. Section 10 of the Act provides for inviting objection from the person who are aggrieved. The Assistant Consolidation Officer is empowered to decide the objection which order is appealable u/s 10(5) [sic?10(6) ?] of the Act. The register of lands so prepared showed Badanlal Choudhary and Tetar Choudhary, the two brothers, in possession of several plots of lands in village Jagdishpur. Admittedly, the two brothers were coming in possession of their moiety interest after amicable partition between them. Badanlal Choudhary had no issue. He had

adopted one Jogendra Prasad Choudhary alias Ram Narayan Choudhary son of Girish Chandra Choudhary by registered deed of adoption dated 9.10.1953 (Annexure-1). The petitioners had purchased 83 decimals of land in plot No. 551 appertaining to khata No. 502 in the village in question from the aforesaid Ram Narayan Choudhary by registered sale deed dated 26.4.1977.

3. The petitioners thereafter filed an application under sub-section (2) of section 10 of the Act before the Assistant Consolidation Officer for making necessary correction in the records of right. The petition was registered as Case No. 158 of 1977. Sk. Hasimuddin father of the petitioners (since deceased) had also filed objection stating that he had purchased 87 decimals of land of plot no. 2549 appertaining to khata No. 502 in village Jagdishpur from the said Ram Narain Choudhary by a registered sale deed dated 24.5.1963 for valuable consideration. His objection was registered as Case No. 159 of 1977. Another objection was filed by the petitioners stating that they had purchased 48(1/4) decimals of land in plot no. 2551 appertaining to khata No. 502 in village Jagdishpur from said Ram Narayan Choudhary by registered sale deed dated 22.4.1974. This objection was registered as Case No. 160 of 1977. Yet another objection was filed by the mother of the petitioners Bibi Hasina stating that they had purchased 1 acre 9 decimals land in plot No. 2530 and 1 acre 95 decimals in plot No. 2531 both appertaining to Khata No. 502 from Ram Narayan Choudhary by registered sale deed dated 20.5.1967 and also prayed for correction of entries in the records accordingly. All the four cases were disposed of by the Assistant Consolidation Officer by his order dated 1.6.1977. No appeal against this order was filed for eight years.

4. Respondent No. 5 Banarsi Lal Choudhary, who is son of Tetar Choudhary and nephew of Badanlal Choudhary, filed a petition that he was sole legal heir of his father Tetar Choudhary and Uncle Banarsi (sic?Badan ?) Lal Choudhary praying for opening khata in respect of the lands recorded in their names including the lands with respect to which the names of the petitioners stood entered in the record by virtue of order passed by the Consolidation Officer. In the said petition Banarsi Lal Choudhary challenged the validity of the deed of adoption. The Consolidation Officer by order dated 8.2.1985 declined to review the order of the Consolidation Officer aforesaid. The order of the Consolidation Officer rejecting the claim of respondent No. 5 was not appealable. But respondent No. 5 filed an appeal before the Assistant Director of Consolidation purported to be u/s 10B of the Act praying that the khata opened in the names of the petitioners, their father and mother be cancelled and khata be opened in his name after cancelling the deed of adoption.

5. The Assistant Director of Consolidation was not empowered to entertain the appeal. He assumed the jurisdiction and cancelled the entries made in favour of the petitioners by the Assistant Consolidation Officer. The Assistant Director of Consolidation declared the registered deed of adoption as illegal, invalid and inoperative (Annexure-2.)

6. The petitioner thereafter filed an application for review of the order (Annexure-2) but that was not entertained. The Assistant Director of Consolidation did not interfere with the order and the petitioners filed revision before the Director of Consolidation, who dismissed the revision and thus the order of the Assistant Director of Consolidation became final and no appeal was filed. Both the proceedings were declared non est.

7. Mrs. Mahasweta Chatterjee, Learned Counsel appearing for the petitioners in C.W.J.C. No. 1323 of 1988 and Mr. Rajeeva Sharma, Learned Counsel appearing for the petitioners in C.W.J.C. No. 3467 of 1988 submitted that the consolidation court has no jurisdiction to decide the validity of the adoption of Ram Narayan Choudhary.

8. In *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, the Supreme Court drew a distinction between the cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. The Supreme Court observed that the consolidation authorities have no power to cancel the deed of adoption which is a voidable document and holds good so long as it is not set aside by the competent court.

9. This question arose directly in *Ram Sakal Singh Vs. Mosamat Monako Devi (Dead) and Others*, . In this decision the Supreme Court held that if the deed of gift was voidable and not void, that can be ignored by any court.

10. In *Jiwan Pandey vs. Mahendra Rai*, 1985 PLJR 686 it was held that when the decree is voidable but not void, the suit does not get abated since the civil court alone has to grant declaratory relief to avoid the decree.

11. Full Bench of this Court in *Sheoratan Chamar and Others Vs. Ram Murat Singh and Others*, , following the decision in *Gorakh Nath Dube Case* (supra) approved the ratio in *Jiwan Pandey's* case (supra).

12. Thus, it is apparent from these decisions that the impugned order of the Assistant Director of Consolidation, as contained in Annexure-2, and the revisional order passed by the Director of Consolidation, as contained in Annexure-4, must be held to be without jurisdiction since he has no power to declare the deed of adoption to be invalid. For the reasons stated above, both the writ applications are allowed and the order of the Assistant Director of Consolidation, as contained in Annexure- 2, and the order of the Director Consolidation (Annexure-4) are quashed. Since the contesting respondents have not appeared, there shall be no order as to costs.